

REMARKS/ARGUMENTS

The Office Action mailed November 28, 2007, has been received and reviewed. Claims 1 through 14 are currently pending in the application. Claims 4 through 6 stand rejected. Claims 1 through 3, and 7 through 14 are allowed, which indication Applicant acknowledges with appreciation. Applicants have amended claims 1, 3, 4, 7, 8 and 9, and respectfully request reconsideration of the application in view of the remarks which follow.

The amendments to claims 1, 3, 4, 7, 8 and 9 are solely to enhance antecedent basis in each of the respective claims, by referring to a “pile driving” mechanism instead of a “piling” mechanism or a “driving” mechanism, as the antecedent recitation of that element in each of claims 1, 3, 4, 7, 8 and 9 is “a mechanism for driving the pile into the ground.” Accordingly, the scope of each of claims 1, 4, 7, 8 and 9 remains the same as when originally filed, and no equivalents to the previously recited terms “piling mechanism” and “driving mechanism” have been surrendered.

35 U.S.C. § 102(b) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 3,827,508 to MacKinnon

Claims 4 through 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by MacKinnon (U.S. Patent No. 3,827,508). Applicants respectfully traverse this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(b) anticipation rejections of claims 4 through 6 are inappropriate because the MacKinnon reference fails to describe each and every element recited in claim 4.

Specifically, claim 4 recites, *inter alia*, “a support frame having a lower end mounted on a footing” (emphasis added), and that “the frame includes at least one opening provided in the side thereof to facilitate removal of the device from around a pile partially extending from the ground.”. The support frame of the reference is implicitly identified by the Office as skeletal

lead 20, which is mounted on a footing 21. In the rejection, the Office states “The frame would appear to have an opening (located on the footing through which the pile is received).” However, the claim recites that the at least one opening is provided in the side of the frame, *not* in the side of the footing. The frame 20 of Mackinnon, referring to all of the drawings figures but especially FIGS. 2 and 3, reveals that there is no opening in the side of the frame. Further, there is admittedly no opening described in the side of footing 21 of MacKinnon and, rather than an opening in the side of footing 21 as surmised by the Office, it is just as likely that there is an aperture *through* footing 21 into which the distal end of the pile might be placed. Thus, there is no opening disclosed in the side of the frame of MacKinnon, nor is there inherently an opening in the side of the footing on which the frame rests.

In addition, Applicant respectfully asserts that mechanism 40 is not a mechanism for gripping a pile but, rather, a mechanism for slidably guiding a pile as it is being driven. See, particularly, Col. 3, line 59 through Col. 4, line 21, and in particular Col. 4, lines 8-11, wherein the mechanism 40, referenced as “pile monkey” 40, is described as having jaws (47, 50) sliding with respect to the pile. FIG. 3 also clearly discloses the non-gripping, sliding relationship of jaws 47, 50 to the H-shaped piling (unnumbered) that they surround when locked in place about the pile.

Accordingly, claim 4 is not anticipated, and the rejection should be withdrawn.

Claims 5 and 6 are allowable as depending from claim 4 and, further, as MacKinnon has no opening in the frame sized to allow a pile partially extending from the ground to pass therethrough (Claim 5), nor does the device of MacKinnon include two openings located on opposite sides of the frame (Claim 6).

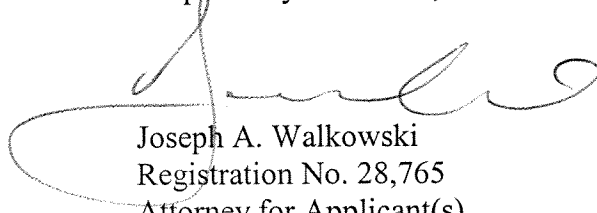
ENTRY OF AMENDMENTS

The amendments to claims 1, 3, 4, 7, 8 and 9 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

CONCLUSION

Claims 1 through 14 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Walkowski', is written over a large, faint circular stamp or watermark.

Joseph A. Walkowski
Registration No. 28,765
Attorney for Applicant(s)
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: March 6, 2008
JAW/nj:slm
Document in ProLaw